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March 27, 2006

Justice Antonin Scalia
Supreme Court of the United States
Washington, DC 20543

Dear Justice Scalia:

I am writing regarding recent reports about a speech you gave in Switzerland in which you may have unambiguously stated your personal and legal predilections in a case pending before the Supreme Court. I wish to know whether these accounts of your speech are accurate and, if so, whether you will recuse yourself tomorrow from the Court's consideration of *Hamdan v. Rumsfeld*, which bears on that very issue.

According to various reports, you gave a speech on March 8, 2006, at the University of Freiburg in Switzerland.¹ In the course of your remarks, you are reported to have said, "War is war, and it has never been the case that when you captured a combatant you have to give them a jury trial in your civil courts." You also may have dismissed an argument that detainees at Guantanamo Bay are entitled to any protections under human rights conventions, stating, "If [a Guantanamo Bay detainee] was captured by my army on a battlefield, that is where he belongs. I had a son on that battlefield and they were shooting at my son and I'm not about to give this man who was captured in a war a full jury trial. I mean it's crazy." As you are no doubt aware, the Supreme Court is scheduled to hear oral arguments tomorrow on that very question. In *Hamdan v. Rumsfeld*, a detainee at Guantanamo Bay, Salim Ahmed Hamdan, is challenging the government's authority to subject him to a military trial.

Judicial ethics guidelines contain provisions designed to encourage impartiality in legal proceedings. First, the American Bar Association's Model Code of Judicial Conduct provides that "a judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make

¹See, e.g., Michael Isikoff, *Supreme Court: Detainees' Rights - Scalia Speaks his Mind*, NEWSWEEK, Apr. 3, 2006.

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any nonpublic comment that might substantially interfere with a fair trial or hearing.”² Second, federal law requires a justice or judge to disqualify himself from a matter in which “he has a personal bias or prejudice concerning a party.”³ If the statements above can be attributed to you, it would appear that, even prior to oral argument, you have an opinion with respect to the petitioner’s case and have made public comments that could affect its outcome. This could indicate the need for your recusal.

For these reasons, I would appreciate your response as to whether you did, in fact, make the statements above or others to similar effect. If so, I would further ask whether you will recuse yourself from consideration of *Hamdan v. Rumsfeld* and any other cases involving the rights of military detainees and, if not, why not. Please reply through the Judiciary Committee Democratic office, 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax: 202-225-4423).

Sincerely,



John Conyers, Jr.
Ranking Member

cc: Hon. F. James Sensenbrenner, Jr.

²AMERICAN BAR ASS’N, MODEL CODE OF JUDICIAL CONDUCT 3(B)(9) (2004).

³28 U.S.C. § 455.